

ARTICLE

HUMAN TRAFFICKING IN CHINA

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When a son is born,  
Let him sleep on the bed,  
Clothe him with fine clothes,  
And give him jade to play with.  
How lordly his cry is!  
May he grow up to wear crimson  
And be the lord of the clan and the tribe.

When a daughter is born,  
Let her sleep on the ground,  
Wrap her in common wrappings,  
And give her broken tiles for playthings.  
May she have no faults, no merits of her own,  
May she well attend to food and wine,  
And bring no discredit to her parents.

(Book of Songs (800–600 B.C.)<sup>1</sup>)

## I. INTRODUCTION

### A. *Background of China's Demographic Crisis*

Several factors work interdependently to cause a serious shortage of women in China. Women are bought and sold, murdered and made to disappear in China, in order to comply with a governmental policy that reflects the cultural phenomenon of male-child preference. In 1979, the Chinese government instituted a One-Child Policy (OCP) to control the enormous population expansion. In order to comply with the OCP and to ensure that the family has a coveted boy child, millions of people in China have committed sex-selective abortions, infanticide of their own baby girls, nonregistration of the first or second infant in the family, and the abandonment or sale of their own girl children. Women are disappearing because of the social pressures of male-child preference, the zealous enforcement of the OCP by local government authorities, and the murderous responses to this policy undertaken by millions of ordinary people in China who are desperate to have a son. The scarcity of women has produced a gender imbalance and an increase in prostitution and human trafficking in China.

Trafficking in China has many forms: the purchase of women for brides, the purchase of a male son, the sale of unwanted female children, and the use of people for slave labor, commercial sex, or prostitution. Men, primarily in rural China, are desperately seeking a bride in a country where women are in short supply. These men will resort to purchasing a trafficked woman for marriage. Couples seeking a male child will sell, drown, or even murder their girl child in order to make room for the purchase of a trafficked baby boy. Young adult women and boy infants are bought and sold like cargo in China. Human trafficking in China is a lucrative international

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1. Cited in ELISABETH J. CROLL, *FEMINISM AND SOCIALISM IN CHINA* 23 (1978).

business that is expanding due to the aggressive implementation of the OCP, a faulty legal system, and the blind adherence to long standing cultural traditions that devalue women. Moreover, in China, Communist Party directives overshadow the legislative and judicial process. The primacy of government policy results in the ineffectiveness of laws that theoretically protect women and female children in China.<sup>2</sup>

### B. Chinese Culture

Women's inferiority is deeply ingrained in the Chinese culture and is reflected in the *Five Classics*, a canonical literary text ascribed to Confucius. The Confucian view of woman is clearly stated: "The female was inferior by nature, she was dark as the moon and changeable as water, jealous, narrow-minded and insinuating. She was indiscreet, unintelligent, and dominated by emotion. Her beauty was a snare for the unwary male, the ruination of states."<sup>3</sup>

In Chinese culture, girls typically marry into the husband's family, leave home, and take care of their husband's parents. In the past, China's feudal tradition continuously subjected women to subordination by their father, husband, and even their son due to a patriarchal and patrilineal system. In addition, according to the rules of primogeniture, only the first male born traditionally inherited the parents' fortune. Moreover, only boys could continue the patrilineal family line. Thus, even today girl babies are considered financial burdens because they are unavailable to take care of their elderly parents who, upon retirement, do not receive enough money from the inadequate social services system in China. If only one child is allowed, the general consensus in China is that it better be a boy!

### C. Trafficking in China

Trafficking of women and boy children in China is a serious human rights violation. According to the U.S. Department of State Annual Trafficking in Persons Report (TIP Report), domestic trafficking is "the most significant problem in China,"<sup>4</sup> and an estimated ten thousand to twenty thousand victims are trafficked internally each year.<sup>5</sup> China is designated as a source, transit, and destination country for women and children trafficked for the purpose of sexual exploitation and forced labor.<sup>6</sup> Trafficking occurs

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2. Xiaorong Li, *License to Coerce: Violence Against Women, State Responsibility, and Legal Failures in China's Family Planning Program*, 8 YALE J.L. & FEMINISM 145, 184 (1996).

3. Richard W. Guisso, *Thunder over the Lake: The Five Classics and the Perception of Women in Early China*, in WOMEN IN CHINA: CURRENT DIRECTIONS IN HISTORICAL SCHOLARSHIP 59 (Richard W. Guisso & Stanley Johannesen eds., 1981).

4. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 91 (2008), available at <http://www.state.gov/documents/organization/105501.pdf> [hereinafter TIP REPORT 2008].

5. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 80 (2007), available at <http://www.state.gov/documents/organization/82902.pdf> [hereinafter TIP REPORT 2007].

6. TIP REPORT 2008, *supra* note 4, at 91.

mainly within China's borders, but Chinese citizens are also trafficked out of China into Africa, Asia, Europe, Latin America, the Middle East, and North America.<sup>7</sup> Poor and desperate Chinese women are lured abroad with false promises of legitimate work only to be forced into prostitution and commercial sexual exploitation. They are trafficked typically into Taiwan, Thailand, Malaysia, and Japan. Foreign women and children are trafficked into China from Mongolia, Burma, North Korea, Russia, and Vietnam for purposes of forced labor, marriage, and prostitution.<sup>8</sup>

Experts believe that China's OCP has resulted in a male-female birth ratio imbalance, and the scarcity of women has contributed mightily to the increase in trafficking of women for brides.<sup>9</sup> The government of China is making efforts to comply with minimum standards for the elimination of trafficking, but it fails to adequately punish traffickers or protect Chinese and foreign victims of trafficking.<sup>10</sup> China still continues to treat trafficking victims as criminals and regularly deports North Korean trafficked women back to horrendous conditions in their home country.<sup>11</sup> In December 2007, China released a National Action Plan to Combat Trafficking, but the government has not allocated enough funds to implement the plan.

Trafficking laws around the world, including China's, are either weak or nonexistent, and those that exist are either not enforced or often enforced to the detriment of the victim, rather than the perpetrator.<sup>12</sup> China has a trafficking law, but it is not well enforced.<sup>13</sup> In addition, prostitution is illegal in China, and victims of trafficking are treated there like criminals engaging in prostitution. National laws that prohibit prostitution often discourage victims from seeking help from the authorities who might either throw the trafficking victims in jail for engaging in illegal prostitution or deport them to their home countries, where they are forced to live as social outcasts in horrific conditions.<sup>14</sup> However, legalizing prostitution will not help trafficked women. Legalized prostitution simply facilitates trafficking because the trafficked woman who is forced to engage in sex work against her will cannot be distinguished from the voluntary prostitute. A better approach is to increase the criminal penalties for trafficking. Since the criminal penalties for trafficking in women are typically very light, international crime syndicates are drawn to the sex trade industry.<sup>15</sup> Sex trafficking is the

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7. *Id.*

8. *Id.* at 92.

9. *Id.*

10. *Id.*

11. *Id.*

12. Susan Tiefenbrun, *The Saga of Susannah—A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 114 (2002).

13. TIP REPORT 2008, *supra* note 4, at 93.

14. Tiefenbrun, *supra* note 12, at 113–14.

15. *Id.* at 114.

third-most-lucrative international crime, after the traffic of arms and drugs.<sup>16</sup> In China, human trafficking earns more money annually than the trafficking of weapons or drugs. The economic benefits of human trafficking make it all the more difficult to eradicate.

This article will address human trafficking in China and the root causes of this human rights violation that has developed from the strict enforcement of a governmental OCP and the persistence of a cultural phenomenon of male-child preference. The article is organized in five parts. Part II will examine the laws prohibiting trafficking in China; Part III will discuss the U.S. trafficking law; Part IV will identify specific problems related to trafficking in China; Part V will unearth root causes of trafficking in China based on the OCP and the increasing scarcity of women; Part VI will offer policy suggestions to combat the growth of trafficking in China. The purpose of this article is to encourage the Chinese government to further protect the lives and rights of women.

## II. CHINESE TRAFFICKING LAWS

In addition to China's marriage law,<sup>17</sup> family planning policies, and inheritance laws, which do theoretically protect women and children, China has enacted several laws that specifically address trafficking, kidnapping, and sexual exploitation of women and children. In 1991, the National People's Congress Standing Committee criminalized the purchase of women by enacting a "Decision Relating to the Severe Punishment of Criminals Who Abduct and Kidnap Women and Children" (Decision), making the abduction and the sale of women and children separate offenses.<sup>18</sup> Prior to the promulgation of this Decision, many traffickers who sold women whom others had kidnapped were released by the courts.<sup>19</sup> Now both the kidnapper and the seller are prosecuted under this Decision. The use of force to prevent the rescue of trafficked women was also specifically criminalized.<sup>20</sup> In 1992, the Law on the Protection of Women's Rights and Interests (LPWRI)<sup>21</sup> was passed. This was the first basic law to protect women's rights

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16. *Id.* at 137.

17. Marriage Law (promulgated by Order No. 9 of the Chairman of the Standing Comm. Nat'l People's Cong., Sept. 10, 1980, effective Jan. 1, 1981) (P.R.C.), available at [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record003.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record003.htm) [hereinafter Marriage Law].

18. Decision Regarding the Severe Punishment of Criminals Who Abduct and Traffic In or Kidnap Women or Children (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 4, 1991, effective Sept. 4, 1991) (P.R.C.), available at <http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200211/20021100053260.html>.

19. Human Rights in China, *Caught Between Tradition and the State: Violations of the Human Rights of Chinese Women*, 17 WOMEN'S RTS. L. REP. 285, 290 (1996).

20. *Id.*

21. Law Protecting Women's Rights and Interests (promulgated by Order No. 58 of the President of the P.R.C. on Apr. 3, 1992, effective Oct. 1, 1992), available at [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record002.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record002.htm) [hereinafter LPWRI].

and interests in China.<sup>22</sup> The LPWRI prohibits kidnapping, trafficking, and buying women, though it fails to prescribe any specific penalties for these offenses.<sup>23</sup> The LPWRI also fails to provide a definition of discrimination against women.<sup>24</sup> However, those who buy abducted women and force them to have sex may be tried for the crime of rape under the Chinese Criminal Code.<sup>25</sup> Other types of violence against abducted women are subject to penalties under the Chinese Criminal Code.<sup>26</sup> The rights of women in Hong Kong are protected by the Sex Discrimination Ordinance (1995) and the Family Status Ordinance (1997).<sup>27</sup>

Article 236 of the Chinese Criminal Code provides a three- to ten-year sentence for rape, while sexual exploitation of girls under the age of fourteen can receive a sentence of life imprisonment or the death penalty.<sup>28</sup> Article 240 prohibits abducting and trafficking a woman or child and specifies a five- to ten-year sentence for this crime.<sup>29</sup> A ten-year to lifetime sentence or the death penalty may be imposed on those who abduct and traffic a woman or child, rape or prostitute the woman, steal an infant for the purpose of selling the victim, or sell the victim outside of China.<sup>30</sup> Purchasing an abducted woman or child carries a punishment of up to three years, although the punishment can be combined with other provisions in instances of rape or other crimes in order to give the perpetrator a longer sentence.<sup>31</sup> China's Criminal Code does not prohibit commercial sexual exploitation involving coercion or fraud, nor does it prohibit all forms of trafficking, such as debt bondage.<sup>32</sup> Chinese law enforcement efforts to arrest and prosecute perpetrators of these crimes are seriously lacking, and China does not even report statistics on prosecutions, convictions, or sentences for these crimes.<sup>33</sup>

The Law on the Protection of Minors, adopted in 1991, was revised in 2006 and became effective in June 2007.<sup>34</sup> This law specifically prohibits

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22. Chairperson, Comm. on the Elimination of Discrimination Against Women, *Report of the Comm. on the Elimination of Discrimination Against Women*, ¶ 272, delivered to the U.N. General Assembly, U.N. Doc. A/54/38 (Feb. 5, 1999) [hereinafter CEDAW Report].

23. LPWRI, *supra* note 21.

24. CEDAW Report, *supra* note 22, ¶ 283.

25. Criminal Law (adopted by Nat'l People's Cong., July 1, 1979, revised Mar. 14, 1997), arts. 236, 241 (P.R.C.), available at [http://www.unescap.org/esid/psis/population/database/pop\\_laws/law\\_china/ch\\_record010.htm](http://www.unescap.org/esid/psis/population/database/pop_laws/law_china/ch_record010.htm) [hereinafter Criminal Law].

26. Human Rights in China, *supra* note 19, at 290.

27. CEDAW Report, *supra* note 22, ¶ 260.

28. Criminal Law, *supra* note 25, art. 236.

29. *Id.* art. 240.

30. *Id.*

31. *Id.* art. 241.

32. TIP REPORT 2007, *supra* note 5, at 80.

33. TIP REPORT 2008, *supra* note 4, at 93.

34. Law on the Protection of Minors (adopted by the Standing Comm. Nat'l People's Cong., Sept. 4, 1991, revised Dec. 29, 2006, effective June 1, 2007) (P.R.C.), available at [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383869.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383869.htm).

the trafficking, kidnapping, and sexual exploitation of minors.<sup>35</sup> The chairman of the Standing Committee of the National People's Congress has "urged tighter supervision on the implementation of the law," and warned that inspection teams would be visiting several provinces in the summer of 2008 to investigate compliance with the law.<sup>36</sup>

In December 2007, the Chinese government established a new Office for Preventing and Combating Crimes of Trafficking in Women and Children.<sup>37</sup> At that time, China also released its much-anticipated National Action Plan to Combat Trafficking, but "there are no plans for resources to be allocated to local and provincial governments for the implementation of the plan. Additionally, the action plan covers only sex trafficking of females, and does not address labor trafficking or male victims of sex trafficking."<sup>38</sup>

### III. U.S. TRAFFICKING LAW

The Trafficking Victims Protection Act of 2000 (TVPA)<sup>39</sup> is the U.S. law with an international prong that is designed to combat human trafficking by punishing traffickers, protecting victims, and preventing trafficking.<sup>40</sup> On October 28, 2000, President William Clinton signed the TVPA in order to provide an international solution to an international crime. This law severely punishes sex trafficking as if it were a crime as serious as rape. Trafficking is punishable by a sentence of twenty years to life imprisonment.<sup>41</sup> The TVPA has been hailed as the "most significant human rights legislation of [the U.S.] Congress."<sup>42</sup>

In addition to providing protection for victims, prosecution for perpetrators, and prevention of the crime of trafficking, the TVPA also intends to "encourage foreign governments to take effective actions to counter all forms of trafficking in persons" by enacting or amending sex trafficking legislation.<sup>43</sup> The TVPA seeks to strengthen enforcement policies and coor-

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35. *Id.* art. 41.

36. Embassy of the People's Republic of China in the United States of America, *China's Top Legislator Urges Better Protection of Minors*, June 2, 2008, available at <http://www.china-embassy.org/eng/xw/t443171.htm>.

37. TIP REPORT 2008, *supra* note 4, at 92.

38. *Id.*

39. Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101–7112 (2000).

40. *Id.*

41. Trafficking with Respect to Peonage, Slavery, Involuntary Servitude or Forced Labor, 18 U.S.C. § 1590 (2000).

42. Press Release, Eric Hotmire, *Senate Passes Brownback, Wellstone Trafficking Victims Protection Act* (July 27, 2000), available at <http://brownback.senate.gov/pressapp/record.cfm?id=175961&&year=2000&>. President Clinton stated that the TVPA was "the most significant step we've ever taken to secure the health and safety of women at home and around the world." Leah Platt, *Regulating the Global Brothel*, AM. PROSPECT MAG., Summer 2001, available at [http://www.thirdworldtraveler.com/Women/Regulate\\_Global\\_Brothel.html](http://www.thirdworldtraveler.com/Women/Regulate_Global_Brothel.html).

43. TIP REPORT 2008, *supra* note 4, at 5.

dinate international anti-trafficking efforts through the publication of the annual TIP Report by the U.S. State Department.<sup>44</sup>

#### IV. TRAFFICKING IN CHINA

##### A. *Domestic Trafficking of Women Within China*

According to the 2008 U.S. State Department TIP Report, China remains “a source, transit, and destination country for men, women and children trafficked for the purposes of sexual exploitation and forced labor.”<sup>45</sup> After spending four years on Tier 2<sup>46</sup> of the TIP rankings from 2001 to 2004, China was dropped to the Tier 2 Watch List in 2005, where it has remained up to the present due to its noncompliance “with the minimum standards for the elimination of trafficking.”<sup>47</sup> Some of the factors impeding progress in China’s anti-trafficking efforts include “tight controls over civil society organizations, restricted access of foreign anti-trafficking organizations, and the government’s systematic lack of transparency,” as well as its failure to “address labor trafficking or male victims of sex trafficking.”<sup>48</sup>

Because of the scarcity of women in China due to the impact of the OCP and the cultural force of the male-child preference, domestic trafficking is one of the leading problems in China today. In 2007, the TIP Report stated that there are a minimum of ten thousand to twenty thousand victims trafficked internally per year.<sup>49</sup> The profit earned in human trafficking in China is more than seven billion dollars annually, more than arms trafficking or drug trafficking.<sup>50</sup> International organizations state that 90 percent of the trafficking victims are women and children from the Anhui, Henan, Hunan, Sichuan, Yunnan, and Guizhou Provinces who are sent to wealthier provinces in the East and trafficked primarily for sexual exploitation.<sup>51</sup>

The abducted women are usually between the ages of thirteen and twenty-four.<sup>52</sup> While many women are sold into forced and exploitative prostitution, most are purchased as brides in rural parts of China.<sup>53</sup> As the

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44. *Id.*

45. *Id.* at 91.

46. *Id.* at 93.

47. *Id.* at 92.

48. *Id.*

49. TIP REPORT 2007, *supra* note 5, at 80.

50. Hong Ju, Jianhong Liu & Alicia Crowther, *Female Criminal Victimization and Criminal Justice Response in China*, 46 BRIT. J. CRIMINOLOGY 859, 863 (2006). Note that statistics on income from trafficking can be unreliable. The 2008 TIP Report states that the total annual income earned internationally in trafficking is thirty-two billion dollars. Therefore, the seven billion dollar figure for China appears to be misleading and inaccurate. TIP REPORT 2008, *supra* note 4, at 34.

51. TIP REPORT 2007, *supra* note 5, at 80.

52. Calum MacLeod, *Life Begins Again for Chinese Girl Sold as Slave at 12*, INDEPENDENT (London), May 17, 2000, available at [http://findarticles.com/p/articles/mi\\_qn4158/is\\_20000517/ai\\_n14313948](http://findarticles.com/p/articles/mi_qn4158/is_20000517/ai_n14313948).

53. *Id.*

number of available women decreases and the number of peasant families moving to urban areas for jobs increases, peasant men look to traffickers to supply them with a wife.<sup>54</sup> Some say it is economically cheaper to purchase a wife than to pay for a wedding and dowry gifts.<sup>55</sup> Local villagers often sympathize with the husband whose bought bride tries to escape, and villagers sometimes will return the purchased wife to her husband even if she complains of abuse.<sup>56</sup>

### *B. International Trafficking into and Outside of China*

International trafficking of Chinese citizens to Africa, Asia, Europe, Latin America, the Middle East, and North America is increasing.<sup>57</sup> Many poor Chinese women are duped by false promises of legitimate jobs in Taiwan, Thailand, Malaysia, and Japan, only to be sold into prostitution upon their arrival.<sup>58</sup> Although trafficking remains illegal in China, this crime is inadequately enforced, especially in the vulnerable southern provinces near Thailand and Taiwan.<sup>59</sup> In relation to the number of women and children trafficked in China, there are relatively few investigations of trafficking and even fewer trials or convictions.<sup>60</sup> In 2006, in Anhui Province, one of the major sources of trafficking victims, only six traffickers were convicted and sentenced to life imprisonment.<sup>61</sup> In 2007, China did not report any country-wide conviction records for trafficking.<sup>62</sup>

In 2007, the Chinese government “reported investigating 2,375 cases of trafficking of women and children . . . which is significantly lower than the 3,371 cases it cited in 2006.”<sup>63</sup> These figures are likely based on China’s definition of the term “trafficking,” which “does not include acts of forced labor, debt bondage, coercion, or involuntary servitude, or offenses committed against male victims.”<sup>64</sup> Although China “sustained its record of criminal law enforcement against traffickers,” the U.S. State Department reports that these government statistics are difficult to verify.<sup>65</sup> Finally, in 2007, “Chinese law enforcement authorities arrested and punished some traffickers involved in forced labor practices and commercial sexual exploitation, but did not provide data on prosecutions, convictions, or

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54. *Id.*

55. *Id.*

56. *Id.*

57. TIP REPORT 2008, *supra* note 4, at 91–93.

58. *Id.* at 91–92.

59. TIP REPORT 2007, *supra* note 5, at 81.

60. TIP REPORT 2008, *supra* note 4, at 92.

61. TIP REPORT 2007, *supra* note 5, at 80–81.

62. TIP REPORT 2008, *supra* note 4, at 92.

63. *Id.* at 93.

64. *Id.*

65. *Id.* at 92.

sentences.”<sup>66</sup> The lack of transparency in the Chinese judicial system exacerbates the problem of data verification.

Trafficking is not only limited to women and children but also includes infant girls and boys.<sup>67</sup> In poor rural districts of China, the preference for male children is high, and family planning rules are strictly enforced. The OCP limits the number of children that women may bear, and many women prefer to sell their infant daughter for relatively large sums of money in order to try again for a son.<sup>68</sup> Many women are afraid of the social stigma as well as the large fines and penalties imposed on them for violating the one-child limit.<sup>69</sup> While many families are willing to pay the fines if a son is born, most “would never pay that kind of fine for a daughter.”<sup>70</sup> The trafficked infant girls are often sold to childless urban parents or rural farmers who desire a girl to help with the housework. Some girls in China are even raised to be child brides for farmers in remote villages.<sup>71</sup>

### C. *Complicity of Corrupt Local Officials*

One of the big issues facing the Chinese government’s efforts to combat trafficking is “the significant level of corruption and complicity in trafficking by some local government officials.”<sup>72</sup> In many cases, corrupt local officials participate in the sexual exploitation of women, making it difficult to combat the trafficking industry on a national level.<sup>73</sup> Many of these officials do not view trafficking as a serious crime and do not take steps to prevent it.<sup>74</sup> At times, officials even accept bribes in order to overlook trafficking.<sup>75</sup>

Slave labor is a variant of trafficking. In May and June 2007, several cases of slave labor in brick kilns in China’s Henan and Shanxi Provinces were discovered. Over one thousand farmers, teenagers, and children were confined, subject to physical abuse, and forced to work without pay for their labor.<sup>76</sup> The brick kiln operators claim to have paid off local officials to turn a blind eye to the slave labor and sweat shop conditions.<sup>77</sup> There are unconfirmed press reports that some local officers have resold rescued chil-

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66. *Id.* at 93.

67. Elisabeth Rosenthal, *Bias for Boys Leads to Sale of Baby Girls in China*, N.Y. TIMES, July 20, 2003, available at <http://query.nytimes.com/gst/fullpage.html?res=9E06EEDB1E3CF933A15754C0A9659C8B63&sec=&spn=&pagewanted=1>.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. TIP REPORT 2008, *supra* note 4, at 92.

73. *Id.*; CEDAW Report, *supra* note 22, ¶¶ 291–292.

74. Human Rights in China, *supra* note 19, at 290.

75. *Id.*

76. TIP REPORT 2008, *supra* note 4, at 93.

77. *Id.*

dren to similarly abusive factories in other districts.<sup>78</sup> According to the latest 2008 TIP Report, “[t]he Chinese government has not demonstrated concerted efforts to investigate, prosecute, and punish government officials for complicity in trafficking.”<sup>79</sup> In addition, “Chinese law does not prohibit commercial sexual exploitation involving coercion or fraud, nor does it prohibit all forms of trafficking.”<sup>80</sup> Chinese law recognizes only abduction as constituting a means of trafficking but does not recognize other forms of coercion.<sup>81</sup> Finally, Chinese law specifies only a three-year sentence for purchasers of women and children, but this light sentence is rarely implemented.<sup>82</sup>

#### D. Criminalization of and Reprisals Against Trafficking Victims

One main obstacle to the eradication of trafficking in China is the criminalization and punishment of the victims rather than the traffickers.<sup>83</sup> Prostitution is illegal in China, and authorities often falsely or mistakenly accuse trafficked women of engaging in unlawful prostitution.<sup>84</sup> Authorities fail to distinguish between a trafficked woman who was forced into prostitution and a voluntary prostitute. China arrests trafficked women for prostitution and does not refer them to organizations providing services.<sup>85</sup> In other words, China treats the victims of trafficking as mere criminals.<sup>86</sup> “Victims are sometimes punished for unlawful acts that were committed as a direct result of their being trafficked—such as violations of prostitution or immigration/emigration controls.”<sup>87</sup>

In the southern border provinces, local authorities rely heavily upon nongovernmental organizations to identify trafficking victims and to provide victim protection services since the local governments there lack significant resources and are severely underfunded.<sup>88</sup> Many trafficking victims are returned home without any rehabilitation.<sup>89</sup> Foreign trafficking victims are forcibly evicted from China and sent back to their home countries, where they often face punishments and rejection.<sup>90</sup> North Korean trafficking victims are treated solely as illegal economic migrants, and a few hundred of them are deported each month to North Korea where they may face

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78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. Criminal Law, *supra* note 25, art. 241; MacLeod, *supra* note 52.

83. TIP REPORT 2008, *supra* note 4, at 93.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 92.

88. *Id.* at 93.

89. TIP REPORT 2008, *supra* note 4, at 93.

90. *Id.*

severe penalties.<sup>91</sup> Some Chinese trafficking victims also face punishments in the form of fines for leaving China without proper authorization, even if they were coerced to leave China by authorities.<sup>92</sup> China clearly continues to punish the victims of trafficking.

Trafficked women face discrimination from their own families and communities upon their release and return home.<sup>93</sup> Families feel that the trafficking victim has caused them shame and “a loss of face” by having sex with her purchaser, even if she was forced to do so.<sup>94</sup> A commonplace view in China is that the woman is at fault for being trafficked.<sup>95</sup> Moreover, people believe that a woman’s virtue is the property of the man; if a woman’s virtue is “used” by another, it loses its value.<sup>96</sup> These beliefs are a sign of the pervasiveness of feudal attitudes deeply entrenched within the Chinese culture, and these attitudes continue to marginalize women.<sup>97</sup>

## V. ROOT CAUSES OF TRAFFICKING

### A. *One-Child Policy*

In 1979, the “One-Child Policy” (OCP) was launched.<sup>98</sup> This policy was outlined in countless Communist Party directives, with hopes that the population growth would be slowed down and result in 1.2 billion by the year 2000, rather than the projected 1.4 billion.<sup>99</sup> At first, only three children or more were prohibited, but the policy was revised after only a few years to forbid couples from having more than one child.<sup>100</sup> Vice Premier Deng Xiaoping declared, “In order to reduce the population, use whatever means you must, but do it! With the support of the Party Central Committee, you will have nothing to fear.”<sup>101</sup> In 1980, the Chinese Marriage Law was enacted, requiring family planning for all married couples and prescribing age restrictions for marriage.<sup>102</sup> For example, according to this law, women cannot marry before they are twenty, and men cannot marry before the age of twenty-two.<sup>103</sup> Late marriage and late childbirth are strongly en-

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91. *Id.* at 93–94.

92. *Id.* at 93.

93. Human Rights in China, *supra* note 19, at 291.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. JAMES Z. LEE & WANG FENG, ONE QUARTER OF HUMANITY: MALTHUSIAN MYTHOLOGY AND CHINESE REALITIES, 1700–2000 94 (1999).

99. Penny Kane & Ching Y. Choi, *China’s One Child Family Policy*, 319 BRIT. MED. J. 992 (1999).

100. LEE & FENG, *supra* note 98, at 93.

101. STEVEN W. MOSHER, A MOTHER’S ORDEAL: ONE WOMAN’S FIGHT AGAINST CHINA’S ONE-CHILD POLICY 274 (1993).

102. Marriage Law, *supra* note 17.

103. *Id.*

couraged.<sup>104</sup> The 1982 Chinese Constitution also requires all Chinese citizens to practice family planning.<sup>105</sup>

The OCP is not outlined in a single national law. It is a policy that has been strictly and even coercively enforced throughout the country since 1979 in order to limit couples as to the time and manner of conception.<sup>106</sup> The 1982 Chinese Constitution stipulates that the absolute leadership of the Central Communist Party is one of the four cardinal principles that govern China.<sup>107</sup> Therefore, adherence to Communist Party directives is equivalent or superior to codified legislation.<sup>108</sup> Individual rights are thus subordinate to the State's interest.<sup>109</sup> Although women and children are given some rights under the Law Protecting Women's Rights and Interests (LPWRI)<sup>110</sup> and the Maternal and Infant Health Care Law (MIHCL),<sup>111</sup> the family planning policies of the State necessarily infringe on the reproductive rights of all Chinese women.

Family planning in China is a basic part of everyone's sex education beginning in grade school.<sup>112</sup> It is continued during premarital counseling, and it is widespread in the popular culture.<sup>113</sup> Chinese citizens all receive an ideological education in order to ensure their awareness of and adherence to all the OCP requirements.<sup>114</sup> Chinese citizens are instructed in the significance of the population policy and its relationship to China's overall economic development.<sup>115</sup> The sacrifice of having only one child in Chinese culture is routinely glorified as obedience to duty and an expression of the love of one's country.<sup>116</sup> Those who exceed the family planning limits are publicly vilified as "irresponsible free-riders."<sup>117</sup> However, one Chinese Minister of Agriculture called the idea of persuading peasants to adhere to

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104. *Id.*

105. XIAN FA art. 25 (1982) (P.R.C.), available at <http://english.people.com.cn/constitution/constitution.html> [hereinafter Chinese Constitution].

106. Xiaorong Li, *supra* note 2, at 151.

107. *Id.* at 150; Chinese Constitution, *supra* note 105, at Preamble para. 3 ("Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship . . .").

108. Xiaorong Li, *supra* note 2, at 150.

109. *Id.* at 152.

110. LPWRI, *supra* note 21; Xiaorong Li, *supra* note 2, at 152.

111. Maternal and Infant Health Care Law (promulgated by Order No. 33 of the President of the P.R.C., Oct. 27, 1994, effective June 1, 1995), available at [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record006.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record006.htm) [hereinafter MIHCL]; Xiaorong Li, *supra* note 2, at 152.

112. LEE & FENG, *supra* note 98, at 134.

113. *Id.*

114. *Id.*

115. See CECELIA NATHANSEN MILWERTZ, ACCEPTING POPULATION CONTROL: URBAN CHINESE WOMEN AND THE ONE-CHILD FAMILY POLICY 16 (1997).

116. LEE & FENG, *supra* note 98, at 134.

117. *Id.*

family planning standards “an illusion.”<sup>118</sup> He stated, “Only coercive measures can be effective in alleviating the problems caused by [the] population explosion . . . . From the perspective of future generations . . . temporary coercion is actually a philanthropic and wise policy.”<sup>119</sup> Thus, force and various forms of intrusive persuasion are used to implement the OCP.

In China, every woman is “continuously and closely monitored by both her street committee and work unit.”<sup>120</sup> Under the OCP, all women in China are forced to use the same form of birth control, and “[b]irth control pills or [a surgically implanted] IUD are the preferred methods” of contraception.<sup>121</sup> Intrauterine devices (IUDs) are inserted into women who have not yet received their quota permission to have a child, as well as women who have had their first child and before the child passes the age of high mortality.<sup>122</sup> Women who have had a child are often pressured into signing a “One-Child Agreement” with the government and to undergo sterilization through tubal ligation.<sup>123</sup>

### 1. *Forced Abortions*

Chinese officials also force abortions upon women who have conceived outside of the quota system.<sup>124</sup> While official government policy states that participation in family planning must be voluntary and that coercion is forbidden, actual practice within the country is reportedly in direct contrast to the government policy.<sup>125</sup>

Women who are illegally pregnant are typically subjected to weeks of high pressure tactics by members of the Women’s Federation and Communist Party leaders using threats, financial pressure, and public family planning “study sessions.”<sup>126</sup> Women are actually escorted by officials to abortion clinics to ensure that they go through with the abortion procedure.<sup>127</sup> In order to avoid the coercive tactics of the government officials seeking to abort an overquota child, some mothers choose “childbirth on the run.”<sup>128</sup> These women flee their city or village where their pregnancy would be monitored in order to go to the home of a distant friend or relative who

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118. JOHN S. AIRD, *SLAUGHTER OF THE INNOCENTS: COERCIVE BIRTH CONTROL IN CHINA* 83 (1990).

119. *Id.*

120. MILWERTZ, *supra* note 115, at 106.

121. MOSHER, *supra* note 101, at 146.

122. MILWERTZ, *supra* note 115, at 107.

123. *See* MOSHER, *supra* note 101, at 216–17.

124. *Id.* at 250–51.

125. AIRD, *supra* note 118, at 30–31.

126. *Id.* at 17; MOSHER, *supra* note 101, at 268.

127. *See* AIRD, *supra* note 118, at 17.

128. MOSHER, *supra* note 101, at 280.

can keep the birth a secret.<sup>129</sup> On occasion, such women are caught and forced into a late-term abortion and forcibly “sterilized at the same time.”<sup>130</sup>

The term “remedial measures” is a common Chinese euphemism for mandatory abortions.<sup>131</sup> Suction abortions can be performed in the first few months of pregnancy. Chinese doctors have also used far more inhumane methods to abort babies, such as inducing premature labor and “inject[ing] pure formaldehyde into the fetal brain through the fontanel, or soft spot” before the baby comes through the birth canal; doctors have also been known to “reach in with forceps [to] crush the baby’s skull.”<sup>132</sup>

## 2. *Forced Sterilizations*

For women in China who are caught giving birth to overquota children, forced sterilizations in addition to abortions are required.<sup>133</sup> At the height of the coercive population planning campaigns, “sterilization presently emerged as the principal ‘technical measure’” to control the population growth.<sup>134</sup> One woman who chose “childbirth on the run” in order to carry her third pregnancy to full term was immediately arrested by birth planning authorities after her return home, “taken under guard to the commune medical clinic . . . [and] given a tubal ligation the same day.”<sup>135</sup>

## 3. *Carrot-and-Stick Coercion for Compliance*

A strong sense of egalitarianism in family planning has produced a highly effective atmosphere of public intimidation in order to implement population controls.<sup>136</sup> Punitive coercive measures for disobedience of the OCP also exist and are used to implement the policy.<sup>137</sup> State officials at all levels are responsible for their own compliance and for the compliance of all those under their jurisdiction.<sup>138</sup> Failing to meet the birth quota limits in an official’s jurisdiction can result in his or her demotion or even dismissal.<sup>139</sup> Therefore, officials use any means possible to enforce the family planning program to ensure the success of their own careers.<sup>140</sup>

Far more extreme measures have also been reported to retaliate against families with overquota births or even those who refuse to sign the One-

129. *Id.*; AIRD, *supra* note 118, at 17.

130. MOSHER, *supra* note 101, at 284–85.

131. AIRD, *supra* note 118, at 12.

132. MOSHER, *supra* note 101, at 255.

133. See Kay Johnson et al., *Infant Abandonment and Adoption in China*, 24 POPULATION & DEV. REV. 469, 477 (1998).

134. AIRD, *supra* note 118, at 33.

135. MOSHER, *supra* note 101, at 243.

136. LEE & FENG, *supra* note 98, at 134–35.

137. *Id.* at 135.

138. *Id.* at 132.

139. *Id.*

140. *Id.*

Child Agreement.<sup>141</sup> These people are denied food, given less drinking water and electricity,<sup>142</sup> see their homes destroyed, refused shelter because their friends are forbidden to help them, fired from jobs, fined up to several times their annual salaries, and denied the right to register their child's birth.<sup>143</sup> A child who is not registered cannot receive healthcare or education services.<sup>144</sup> In 1995, in a village called Xiaoxi, a man named Huang Fuqu, along with his wife and children, was ordered out of his house, which was then blown up with dynamite by government officials.<sup>145</sup> On a nearby wall, the officials painted a warning: "Those who do not obey the family planning police will be those who lose their fortunes."<sup>146</sup> In 1996, in the town of Shenzhen, 906 families were given fifteen days to leave because they had produced too many children.<sup>147</sup> Government officials confiscated their residence permits, revoked their licenses to work, and ordered the housing department not to rent them houses or shops.<sup>148</sup>

By contrast, parents who comply with the OCP are rewarded with economic incentives. They receive a "signing bonus," after they sign the "One-Child Agreement."<sup>149</sup> Parents receive monthly healthcare cash payments until their child turns fourteen, milk subsidies for young children, childcare subsidies, and priority in free healthcare and education.<sup>150</sup>

#### 4. Scarcity of Women

Since the inception of the OCP in 1979, population statisticians estimate that millions of infant girls are missing from projected birth rates.<sup>151</sup> In September 1997, the World Health Organization's Regional Committee for the Western Pacific released a report stating that "more than 50 million women are 'missing' in China, victims of female feticide,<sup>152</sup> selective malnourishment of girls, lack of investment in women's health and various

141. Trent Wade Moore, *Fertility in China 1982–1990: Gender Equality as a Complement to Wealth Flows Theory*, 17 *POPULATION & DEV. REV.* 197, 198 (1998).

142. AIRD, *supra* note 118, at 16.

143. *Id.* at 72–73.

144. *See id.* at 73.

145. Patrick Tyler, *Birth Control in China: Coercion and Evasion*, N.Y. TIMES, June 25, 1995, available at <http://query.nytimes.com/gst/fullpage.html?res=990CE6D61438F936A15755C0A963958260&sec=&spon=&pagewanted=3>.

146. *Id.*

147. Graham Hutchings, *Chinese Town Expels 906 Families for Over-Breeding*, ELECTRONIC TELEGRAPH, Dec. 4, 1996, available at <http://www.telegraph.co.uk/htmlContent.jhtml?html=/archive/1996/12/04/wchin04.html>.

148. *Id.*

149. MILWERTZ, *supra* note 115, at 90.

150. *Id.* at 90–91.

151. REG'L OFFICE FOR THE W. PAC., WORLD HEALTH ORG., WOMEN'S HEALTH IN A SOCIAL CONTEXT IN THE WESTERN PACIFIC REGION 27 (1997) [hereinafter WOMEN'S HEALTH].

152. This term refers to the killing of the girl fetus.

forms of violence.”<sup>153</sup> Other reports project even higher estimates of missing women—up to one hundred million.<sup>154</sup>

*a. Abandonment of Infant Girls*

One of the major sources of the decimation of the female population in China is the abandonment of infant girls. Infanticide has been practiced in China for centuries, and the strict birth planning controls of the 1980s revitalized the problems of abandonment and infanticide of female children.<sup>155</sup> There is a longstanding “tradition” of “throwing away” very young children in the Hubei province.<sup>156</sup> In a Chinese/American study that examined parents who abandoned babies and those that adopted them, the majority of children that parents admitted to abandoning were first- or second-born daughters.<sup>157</sup> Many hoped that by abandoning their newborn daughter, they would be permitted to try again for a son.<sup>158</sup> Child abandonment, particularly of girls and children with disabilities, is a huge problem throughout China, in both rural and urban areas.<sup>159</sup> One official in the district of Shenyang stated, “[E]very year, no fewer than 20 abandoned baby girls are found in dustbins and corners.”<sup>160</sup>

Over 92 percent of babies in state-run orphanages are healthy baby girls.<sup>161</sup> However, due to the poor conditions of the orphanages, a high percentage of the baby girls die within months.<sup>162</sup> In 1995, Human Rights Watch published “Death by Default,” a report that chronicled the horrifying conditions of Chinese orphanages, including “waiting for death” where undesired infant girls were left to starve to death or died from neglect.<sup>163</sup> A British documentary entitled “The Dying Room” chronicled many orphanages where baby girls sit on bamboo benches in the middle of a courtyard with their wrists and ankles tied to the armrests and legs of the bench, rocking listlessly back and forth.<sup>164</sup>

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153. WOMEN’S HEALTH, *supra* note 151, at 27.

154. See MacLeod, *supra* note 52.

155. Johnson et al., *supra* note 133, at 472.

156. Kay Johnson, *The Politics of the Revival of Infant Abandonment in China, with Special Reference to Hunan*, 22 POPULATION & DEV. REV. 77, 78 (1996).

157. Johnson et al., *supra* note 133, at 475.

158. *Id.* at 476.

159. HUMAN RIGHTS WATCH, DEATH BY DEFAULT: A POLICY OF FATAL NEGLECT IN CHINA’S STATE ORPHANAGES 132 (1996).

160. Graham Hutchings, *Female Infanticide ‘Will Lead to Army of Bachelors,’* ELECTRONIC TELEGRAPH, Apr. 11, 1997, available at <http://www.telegraph.co.uk/htmlContent.jhtml?html=/archive/1996/12/04/wchin04.htm>.

161. Johnson et al., *supra* note 133, at 475.

162. Kate Blewett & Brian Woods, *The Dying Room* (Lauderdale Productions 1995), available at [http://www.channel4.com/fourdocs/archive/the\\_dying\\_room.html](http://www.channel4.com/fourdocs/archive/the_dying_room.html).

163. HUMAN RIGHTS WATCH, *supra* note 159, at 136.

164. Blewett & Woods, *supra* note 162.

According to the Marriage Law of 1980 and in the omnibus Law Protecting the Rights and Interests of Women and Children,<sup>165</sup> child abandonment is illegal but has become endemic in Chinese society since the promulgation of the OCP nearly thirty years ago.<sup>166</sup> Parents who have abandoned their children are subject to fines, sanctions, and even forced sterilizations.<sup>167</sup> Even though the laws make child abandonment illegal, there are few provisions for the prosecution of parents who abandon their children.<sup>168</sup>

In the rural Yunnan province, rather than merely abandoning their babies, many women sell their newborns on the black market to smugglers. They resell the babies to wealthier or childless parents in eastern China who need an extra set of hands to work on farms or who do not want to wait through China's endless adoption system.<sup>169</sup> The mothers who sell their daughters do so for many reasons: the fear of exceeding the limits set forth in the OCP, their hope to have a male child in a future pregnancy, or their need for extra money to pay off their debts.<sup>170</sup> Highly coveted male babies are also sold if the mother has exceeded the OCP or wants to make extra money.<sup>171</sup>

The Adoption Law of China<sup>172</sup> requires adoptive parents to be childless and over the age of thirty.<sup>173</sup> Childless adoptive parents who do not meet the thirty-year age requirement are not usually subjected to fines. Nevertheless, many people report that they cannot in fact register their adoption or obtain a proper household registration until they reach thirty years of age.<sup>174</sup> This delay subjects the child to an unregistered status, which deprives the child of benefits and human and civil rights protections.<sup>175</sup> Adoption of abandoned babies also carries risks for the adoptive parents who have other children. These adoptive parents are subjected to steep fines and even sterilizations because the Adoption Law requires the adoptive parent to have no other children.<sup>176</sup> A few families were even forced to give up their adoptive children to a State-run orphanage, where, paradoxically, the

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165. Marriage Law, *supra* note 17; LPWRI, *supra* note 21.

166. Johnson et al., *supra* note 133.

167. *Id.* at 477–88.

168. *Id.* at 479.

169. Hannah Beech Xicheng, *China's Infant Cash Crop*, TIME PAC., Jan. 29, 2001, available at <http://www.time.com/time/pacific/magazine/20010129/china.html>.

170. *Id.*

171. *Id.*

172. Adoption Law (adopted by the Standing Comm. Nat'l People's Cong., Dec. 29, 1991, revised Nov. 4, 1998) (P.R.C.), available at [http://www.unescap.org/esid/psis/population/databse/poplaws/law\\_china/ch\\_record008.htm](http://www.unescap.org/esid/psis/population/databse/poplaws/law_china/ch_record008.htm).

173. Johnson et al., *supra* note 133, at 492.

174. *Id.*

175. *Id.*

176. *Id.*

State incurred the cost of raising the child until another adoptive family could be found.<sup>177</sup>

*b. Infanticide*

Infanticide has been practiced in China since the early part of the first millennium by all classes of society.<sup>178</sup> While male infants also suffered from infanticide, the majority of victims have been female infants due to the traditional Chinese preference for male children to carry on the bloodline and for ancestor worship.<sup>179</sup> Today, infanticide is generally considered immoral in China and also illegal under Chinese law.<sup>180</sup>

Despite its illegality, female infanticide has increased dramatically since the OCP was put into practice in 1979. The doctors were allowed to use any method to kill the babies, even strangulation.<sup>181</sup> In 1989, another report was uncovered disclosing infants being killed by having gauze stuffed into their mouth and being given alcohol or ether injections.<sup>182</sup> In rural clinics, there are reports that babies were “thrown into boiling water and scalded to death or placed in airtight jars and smothered.”<sup>183</sup>

Reports of prosecutions for infanticide are extremely rare because no enforcement mechanism exists for the relevant laws prohibiting infanticide.<sup>184</sup> Under Chinese law, the government typically fails to act unless the victim presses charges.<sup>185</sup> Since the victims here are infants, it is unlikely that charges could be brought, especially if the perpetrators are the infant’s parents. Family planning measures take precedence over individual rights. This protection typically exempts physicians from prosecution for infanticide because they are deemed to be carrying out the State’s birthrate goals.<sup>186</sup>

*c. Sex-Selective Abortions*

The strong preference for male children in China has increased the use of ultrasound machines.<sup>187</sup> Although it has been forbidden by law since 1998 for ultrasound technicians or doctors to reveal the sex of the fetus,<sup>188</sup>

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177. *Id.*

178. LEE & FENG, *supra* note 98, at 47.

179. *Id.*

180. *Id.* at 61.

181. AIRD, *supra* note 118, at 91.

182. *Id.* at 92.

183. MOSHER, *supra* note 101, at 255.

184. LPWRI, *supra* note 21; Criminal Law, *supra* note 25, art. 241.

185. Xiaorong Li, *supra* note 2, at 167.

186. *Id.* at 169.

187. MILWERTZ, *supra* note 115, at 61.

188. *Id.*; Regulation on Prohibiting Fetal Sex Identification and Selective Termination of Pregnancy for Non-Medical Reasons (adopted by the Standing Comm. Nat’l People’s Cong., Nov. 21, 1998) (P.R.C.), available at [http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record021.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record021.htm).

many doctors will perform this service for a small fee or as a favor to friends and family.<sup>189</sup> Enforcement of the laws prohibiting the use of sonograms for sex selection is practically nonexistent, and law enforcement agents seem to be unable or unwilling to implement them.<sup>190</sup> Several factors contribute to the lack of enforcement, including widespread participation by the medical community, strict birth control measures, and the strong desire by couples for a son.<sup>191</sup>

*d. Nonregistration of Children at Birth*

Article 2 of the Maternal and Infant Health Care Law<sup>192</sup> declares that “[t]he State shall develop the maternal and infant health care undertakings and provide necessary conditions and material aids so as to ensure that mothers and infants receive medical and health care services.”<sup>193</sup> This law endeavors to provide increased rights to mothers and their children, but it only applies to sanctioned births within the strict family planning guidelines.<sup>194</sup> Parents who give birth to an overquota child and parents who adopt an abandoned child will often avoid registering the birth of the child in order to avoid steep fines or risk losing the child.<sup>195</sup> Many of the “missing women” in China and the unbalanced sex-ratios stem from underreporting or nonregistration of female births.<sup>196</sup> Underreported births are tied to female abandonment or infanticide, and the nonregistration of female children leads to fewer resources and fewer educational opportunities for these women as they grow older.<sup>197</sup> In effect, the government punishes overquota children for being born by withdrawing their entitlement (and that of their siblings) to basic services.<sup>198</sup>

*B. Recent Changes to the OCP*

In light of the growing scarcity of women in China and the surge in trafficking of baby girls, in 2004 the Chinese government “diversified” its birth control policy.<sup>199</sup> According to Population Vice-Minister Zhao Baige, one child is allowed in China’s cities, two in the rural regions, and three in the ethnic regions.<sup>200</sup> China also began a “Girl Care Project” in order to

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189. Xiaorong Li, *supra* note 2, at 170.

190. *Id.*

191. *Id.*

192. MIHCL, *supra* note 111, art. 2.

193. *Id.*

194. Xiaorong Li, *supra* note 2, at 171.

195. Johnson, *supra* note 133, at 493.

196. MILWERTZ, *supra* note 115, at 60.

197. *Id.*

198. Xiaorong Li, *supra* note 2, at 170.

199. Eric Baculinao, *China Grapples with Legacy of Its ‘Missing Girls,’* MSNBC, Sept. 14, 2004, available at <http://www.msnbc.msn.com/id/5953508>.

200. *Id.*

encourage the birth of girls by cracking down on sex-selective abortions, female infanticide, and abandonment by rewarding families that give birth to girls.<sup>201</sup> Preferential treatment in housing, healthcare, and employment is now provided to families with only daughters, as well as financial incentives and pensions.<sup>202</sup> In some provinces, school fees for girls have been reduced or eliminated, and propaganda banners advocate that preferring boys over girls is “old thinking.”<sup>203</sup> Recently, reports have circulated in China about a new policy allowing two children to be born in a family in which both the husband and the wife were themselves only children.

## VI. POLICY SUGGESTIONS TO COMBAT TRAFFICKING IN CHINA

China must improve its trafficking record. To do so, China must provide adequate funding to local and regional governments to effectively implement the new National Action Plan to Combat Trafficking. The Chinese judiciary is currently under serious reform in order to build people’s confidence in the legal system. The judiciary must remain independent and its officials must prosecute and severely punish traffickers as well as recruiters and employers of forced labor. The government must provide meaningful protection to foreign and domestic victims of forced labor and sex trafficking, including formal victim identification, rehabilitation, and financial as well as psychological and medical services. The legal system must actively investigate, prosecute, and convict public officials who participate in or facilitate trafficking. Chinese trafficking laws need to be revised in order to criminalize all forms of labor that rise to the level of slavery. Laws must be revised to criminalize trafficking in accordance with international standards. The Chinese government must conduct effective and widespread public awareness campaigns through local NGOs in order to inform the public of the dangers and risks of trafficking.<sup>204</sup>

In addition, China must provide foreign victims trafficked into China with legal alternatives to the current inhumane practice of deporting them to their own country where they may face serious hardship or retribution upon reentry.

The national laws of China that protect rights of women and children must be enforced. The health and reproductive rights found in the Law Protecting Women’s Rights and Interests<sup>205</sup> and the Maternal and Infant Health Care Law<sup>206</sup> must not be preempted by State policies that deny individual rights. China cannot allow coercive measures to be taken in order to force

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201. *Id.*

202. Lesley Stahl, *China: Too Many Men*, CBS NEWS, Apr. 16, 2006, available at <http://www.cbsnews.com/stories/2006/04/13/60minutes/main1496589.shtml>.

203. *Id.*

204. See Recommendations for China in TIP REPORT 2008, *supra* note 4, at 92.

205. LPWRI, *supra* note 21.

206. MIHCL, *supra* note 111.

women to adhere to the One-Child Policy. Greater law enforcement measures must be taken against doctors and those individuals who murder and abandon their own infant daughters, as well as those who choose sex-selective abortions in order to have a male child. The State should actively prosecute these cases, rather than rely on the families of the victims, who are often the perpetrators themselves, to press charges. Medical personnel that perform illegal ultrasound scans or infanticide must be held legally accountable.

Finally, the One-Child Policy must be drastically revised in order to comport with the basic international human rights laws to which China is a signatory.<sup>207</sup> The population growth can be checked by providing incentives to limit the number of children, not by inflicting coercive or harsh persuasive tactics. China must begin to address effectively the long-standing cultural prejudices against women. Government practices that promote active discrimination against women in the country must be stopped.

If strict enforcement of the existing laws in China were a government priority, women in China could be given equality in their inheritance rights, as well as wage parity and job opportunities, so that men and women alike are able to sufficiently care for their parents in later years. Substantial pension systems or retirement plans should also be established for people in rural as well as urban areas in China in order to alleviate the elderly's high level of economic dependence upon their children for financial security in agricultural communities. Finally, China must address the illiteracy rate of over one hundred million women by abolishing school fees which exclude rural girls from the right to an education.<sup>208</sup> Textbooks in China must be revised to eliminate gender stereotypes. The implementation of these measures could pave the way toward cultural reform in China. The revision of the One-Child Policy, the eradication of male preference, and the elimination of discrimination against women in Chinese society will reduce human trafficking in China.

## VII. CONCLUSION

In order to reverse the deleterious effects of the One-Child Policy and the marginalization of women in China, the Chinese government must make a commitment to implement laws and policies that can reverse long-standing cultural trends and combat discriminatory traditions against women.

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207. China has not signed the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social, and Cultural Rights, but is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13; Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3.

208. CEDAW Report, *supra* note 22, ¶ 257.

Civil rights laws enacted in the United States in the 1960s have had a profoundly ameliorative effect on reducing discrimination against African Americans in American society. There is no reason why the adoption and strict enforcement of Chinese civil rights and trafficking laws could not similarly result in profound cultural change and equality for women in a traditionally male-dominated society now in transition. Since 1979, China has instituted economic reform policies that miraculously work in harmony with a Communist political system. Now China needs to perform another miracle: the adoption of cultural reforms that produce gender parity and that stop the marginalization of women in Chinese society. Only then will the lucrative business of human trafficking be reduced, if not eliminated entirely.